IN THE HIGH COURT OF JUDICATURE, ANDHRA PRADESH AT HYDERABAD

HON'BLE Mr. JUSTICE R. SUBHASH REDDY

Writ Petition No.6910 of 1998

Dated: March 14, 2007

Between:

G. Nageswara Rao, S/o. late Nagabhushanam, Rep. by his brother & G.P.A. Holder Sri G. Kishore Kumar, S/o. late Nagabhushanam, aged about 41 years, Occ: Business, R/o. MIG-1, B-17/F2, Baghlingampally, Hyderabad – 500 044.

… Petitioner

And

The Executive Engineer (Housing) South Division, Andhra Pradesh Housing Board, M.J. Road, Hyderabad, And another.

… Respondents

Order:

By this Writ Petition, petitioner has questioned the notice dated 09-03-1998, issued in Notice No.B17/F2/MIG. /I/BLP/E1/EE (S)/98/869, by the first respondent, the Executive Engineer (Housing) Andhra Pradesh Housing Board, Hyderabad, whereby directions were issued for removal of alleged unauthorized constructions said to have

been made by the petitioner adjacent to his flat bearing No.B17/F2 MIG.I at Baghlingampally.

2. In the affidavit filed in support of the Writ Petition, it is stated that petitioner has purchased the aforesaid plot in 1982 under hire purchase scheme and after payment of installments, the same was transferred in favour of the petitioner by registered sale deed dated 14-11-1997. The case of the petitioner is that in order to maintain privacy and also to avoid thefts, all the 8 eight flat owners of their block requested respondents for increasing the height of the compound wall. It is alleged that in spite of repeated requests, no action was taken; as such they raised a compound wall and made minor alterations, which are unobjectionable.

3. This court, while admitting the Writ Petition, by order dated 17-03-1998, passed in WPMP No.8418 of 1998, suspended the operation of the impugned notice pending further orders. Even though the Writ Petition is of 1998, no counter affidavit has been filed adverting the allegations of the petitioner.

4. Learned counsel for the petitioner submits that the structure raised by the petitioner cannot be termed as unauthorized construction since it is unobjectionable and the same has been done only to ensure privacy and prevent thefts.

5. On the other hand, learned Standing Counsel appearing for the A.P. Housing Board submits that as per G.O.Ms.No.48 dated 20-04-1992, Regulations called A.P. Housing Board (Use of Appurtenant Land of Multistoreyed Buildings) Regulations 1989 ('the Regulations' for brevity) were approved, and as per the scheme, the ownership of the of the appurtenant land shall vest jointly in the flat owners and the

owners are not supposed to make unauthorized constructions. It is submitted that action is being taken against the petitioner as per Clause 14 of the Regulations.

6. However, a perusal of the impugned notice dated 09-03-1998 does not indicate issuance of any notice and opportunity before issuing the same. Though the Regulations referred above empower the respondents to prevent unauthorized constructions, before issuing the impugned notice to the petitioner, respondents ought to have issued show cause notice to the petitioner. As much as the impugned notice is not preceded by any show cause notice, on this short ground, the impugned notice dated 09-03-1998 is liable to be set aside. Accordingly, the notice dated 09-03-1998 is set aside.

7. The Writ Petition is accordingly allowed. No costs.

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JUSTICE R. SUBHASH REDDY.

March 14, 2007
MRR